Agenda Item 5
July 26, 2011
Action

MEMORANDUM

July 22, 2011

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: **Action:** Bill 19-11, Personnel – Collective Bargaining – Public Access

Government Operations and Fiscal Policy Committee recommendation (3-0): disapprove the Bill.

Bill 19-11, Personnel – Collective Bargaining – Public Access, sponsored by the Council President on recommendation of the Organizational Reform Commission, was introduced on June 14, 2011. A public hearing was held on July 12 and a Government Operations and Fiscal Policy Committee worksession was held on July 18.

Bill 19-11 would require the Council to hold a public hearing on each collective bargaining agreement submitted to it, change certain dates in the collective bargaining process, and require public disclosure of each party's initial bargaining position on major economic provisions. The Council delayed introducing this Bill until after finalizing the FY12 Budget because these process changes, if enacted, could not take effect until collective bargaining for FY13 begins in the fall.

Background

In its report to the Council dated January 31, 2011, the Organizational Reform Commission (ORC), in ***Recommendation #18,*** recommended amending the County collective bargaining laws to require the Council to hold a public hearing on each collective bargaining agreement submitted to it, change certain dates, and require public disclosure of each party's initial bargaining position on major economic provisions.

The full text of the recommendation is below.

Public Accountability in Collective Bargaining

Collective bargaining sessions with County government employee unions are held in meetings closed to the public. The proposals and counter-proposals made by each side are never made public. If the parties reach impasse and invoke interest arbitration, the evidentiary hearing conducted by the arbitrator must be closed to the public. The terms of a negotiated agreement or an arbitrator's award are not made public until they are sent to the Council for approval. The intent of this confidentiality is to encourage the parties to speak freely without fear of their

statements being used against them. Attendance at negotiating sessions by members of the public and the news media could inhibit the free and open discussion necessary to resolve disputes. However, open meetings could also inhibit the parties from making unrealistic demands and statements.

Collective bargaining in open meetings has been tried in Maryland. In 1981, the Carroll County Board of Education adopted a resolution that all collective bargaining meetings with the union representing public school teachers would be conducted in public. The union challenged the Board's resolution in Court, alleging that it was a failure to bargain in good faith. Despite the authority to conduct closed meetings to discuss collective bargaining in the Maryland Open Meetings Law, the Court of Appeals held that the Board could insist on open meetings without violating the duty to bargain in good faith. See, *Carroll County Education Association, Inc. v. Board of Education of Carroll County,* 294 Md. 144 (1982).

More recently, Washington County Public Schools required the school unions to participate in open collective bargaining sessions in 2006. The parties eventually agreed to ground rules for open bargaining that provide for a closed session at the beginning of each meeting to explore new ideas, followed by an open meeting. All proposals and counter-proposals were made public in the open meeting.

We do not believe that all collective bargaining sessions should be open to the public. The parties must be able to speak freely without fear of each statement being published in the news media in order to negotiate in good faith. However, the current system eliminates almost all public input into the collective bargaining process.

- ***We recommend a modest increase in public accountability that would continue to permit the parties to speak freely during negotiations.***

Specifically, we recommend that:

1. The initial proposals and counter-proposals in collective bargaining negotiations from both parties should be publicly posted on the County's website for public comment. The negotiated collective bargaining ground rules with each County employee union should contain a final date for each party to submit all of their proposals for bargaining. We recommend posting the positions of each party, as of that date. *This could be done by the Executive without changing current law or, alternatively, by the Council amending County law.*[1]

[1] **Reservation of Organizational Reform Commissioner Susan Heltemes:** Historically, the integrity of the collective bargaining process has functioned under stringent guidelines that rely on the integrity of all persons involved in the negotiations to maintain confidentiality to the process until a final product/agreement is attained. The final product is open to the public and hearings are held by the Montgomery County Council. Initial disclosures of proposals would likely establish unrealistic expectations not only for management, but also for employees since initial proposals are usually not where the negotiations come down at the conclusion of bargaining. If opening proffers were open to the public, it is likely that outside input could obstruct the bargaining process and interfere with tight timelines and strategy. Such obstruction could alter the negotiating process and ultimately end in more arbitration and deterioration of what has become a respected form of negotiation for our public sector employees. It is important to note that Park and Planning employees, as well as HOC, Montgomery College and MCPS employees, function under state guidelines that are different than those for the firefighters, police and MCGEO. Furthermore, it seems unlikely that making opening proposals from the County and unions prior to

2. The Council should conduct a public hearing on all collective bargaining agreements before the Council's annual budget hearings. In order to accommodate this additional public hearing, we recommend that the statutory time periods for declaring impasse and completing arbitration be moved back by two weeks. *The Council would have to amend current law to change these dates. The Council has the current authority to hold a public hearing on collective bargaining agreements, but there is often not enough time to do this.*

The following chart shows the current statutory dates and our recommended new dates:

Bargaining Law	Current Impasse Date	Current Arbitration Date	New Impasse	New Arbitration Date
Police	January 20	February 1	January 6	January 18
General County Employees	February 1	February 15	January 15	February 1
Fire and Rescue	January 15	February 1	January 2	January 17

Executive's Response

In a memorandum to the Council President dated February 21, 2011, the Executive responded to each of the 28 recommendations in the ORC report. The Executive did not take a position on this recommendation.[2] He stated:

18. Make the collective bargaining process more transparent and increase opportunities for public input on

(a) initial proposals; and

(b) the end of the process.

The ORC report included several recommendations concerning the collective bargaining process. Since we are in the midst of bargaining with all three of our employee unions, I do not think it is appropriate to comment on the Commission's recommendations at this time.

Bill 19-11, sponsored by the Council President on recommendation of the ORC would implement ORC Recommendations #18.

Public Hearing

All 8 witnesses at the July 12 public hearing opposed the Bill. Gino Renne, MCGEO President (©13-17), John Sparks, IAFF Local 1664 President (©18-20), and Marc Zifcak, FOP Lodge 35 President (©21-23) each argued that opening any part of the collective bargaining process to the public would damage the free flow of information. Jean Athey, Peace Action

negotiating would actually result in savings. Such proposed savings are mere conjecture and not worth the effort of upsetting a time honored process that works.

[2] The Executive has still not taken a position on this Bill since the negotiations with the employee unions ended in May.

Montgomery (©24-25), Joslyn Williams, President of the Metropolitan Washington Council, AFL-CIO (©26), Don Roose (©27), Elbridge James, Maryland NAACP, and Ryan Dennis, Progressive Maryland also opposed the Bill as an attack on collective bargaining rights.

July 18 Worksession

The Committee reviewed the Bill. Stuart Weisberg, Office of Labor Relations, represented the Executive Branch, and reported that the Executive does not have a position on the Bill. Gino Renne, President of MCGEO answered questions from the Committee. The Committee recommended (3-0) disapproval of the Bill.

Issues

1. Should the Executive and the union be required to post their initial demands and offers for public review at the beginning of the collective bargaining process?

The opponents of the Bill argue that the collective bargaining process has worked well for 30 years and should be left intact without any changes. The November 2010 Office of Legislative Oversight Report on *Achieving a Structurally Balanced Budget* found that the County's structural budget deficit was fueled by a 64% increase in personnel costs while workyears only increased by 10% over the last 10 years.[3] For FY12, the bargaining process did not result in a complete negotiated agreement with any of the 3 County employee unions or with the certified representative of the local volunteer fire and rescue departments. An arbitrator resolved the impasse in negotiations with each certified organization, and the Executive's proposed FY12 operating budget did not include full funding for any of these arbitration awards. There is room for debate on how well the collective bargaining process is working.

Some of the public hearing speakers argued that collective bargaining sessions open to the public would inhibit the free exchange of views. The ORC agreed. Bill 19-11 would not require any bargaining sessions to be open to the public. It would simply require the parties to publish their opening proposals at the beginning of the process. The theory is that this public access would temper the opening proposals from each side and thereby leave the parties with less ground to make up in working out an agreement. Publishing opening proposals should not inhibit discussions during the negotiations. The Committee concluded that publishing opening proposals would not significantly improve the bargaining process. **Committee recommendation (3-0):** do not require the posting of the initial demands and offers.

2. Should the Council be required to hold a public hearing on each collective bargaining agreement or arbitration award?

The Bill would require the Council to conduct a public hearing on each collective bargaining agreement or arbitration award before acting on it. Under current law, the Council may, but is not required, to hold a public hearing. The Council does hold extensive public

[3] The OLO Report is available at:
http://www.montgomerycountymd.gov/content/council/olo/reports/pdf/2011-2.pdf

hearings on the operating budget before adopting it. In order to add time for this public hearing on each collective bargaining agreement, the dates for completing negotiations, resolving impasses, and submitting the agreement to the Council for review and approval are moved up 2 weeks. A public hearing would promote a better understanding, and possibly acceptance, of the Council's action on the agreement. As IAFF President John Sparks pointed out, the process is already constrained by the need to wait for financial information and projections for the next fiscal year. Mr. Sparks did agree with the requirement that the time for the Executive to submit the agreement to the Council be moved from April 1 to March 15 to coincide with the submission of the budget. The Committee concluded that the loss of 2 weeks in the collective bargaining process would not justify the usefulness of the public hearing. **Committee recommendation (3-0):** do not reduce the time for negotiations in order to require a public hearing.

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Bill No. 19-11
Concerning: Personnel – Collective Bargaining – Public Access
Revised: June 7, 2011 Draft No. 1
Introduced: June 14, 2011
Expires: December 14, 2012
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President on the recommendation of the Organizational Reform Commission

AN ACT to:

(1) require the Council to hold a public hearing on each collective bargaining agreement submitted to it;
(2) change certain dates;
(3) require public disclosure of each party's initial bargaining position on major economic provisions; and
(4) generally amend County collective bargaining laws.

By amending
Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-80, 33-81, 33-108, and 33-153

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-80, 33-81, 33-108, and 33-153 are amended as follows:

33-80. Collective bargaining.

* * *

(d) *Time limits.* Collective bargaining [shall commence] must begin no later than November 1 [preceding a] before any fiscal year for which there is no contract between the employer and the certified representative and [shall] should be concluded by January [20] 6. The employer must publish the certified representative's initial proposal on economic terms and the employer's initial counter-proposal on economic terms on an internet site accessible to the public within 10 days after the employer's initial counter-proposal is made. The resolution of an impasse in collective bargaining [shall] must be completed by [February 1] January 18. These time limits may be waived only by prior written consent of the parties.

* * *

(g) *Submission to Council.* A ratified agreement [shall be] is binding on the employer and the certified representative, and [shall] must be reduced to writing and executed by both parties. In each proposed annual operating budget, the County Executive [shall] must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. Any term or condition of a collective bargaining agreement which requires an appropriation of funds or enactment, repeal, or modification of a County law [shall] must be timely submitted to the County Council by the employer by [April 1] March 15, unless extenuating circumstances require a later date. If a later submission is necessary, the employer [shall] must specify the

submission date and the reasons for delay to the Council President by [April 1] March 15. The employer [shall] must make a good faith effort to have such term or condition implemented by Council action. Each submission to the Council [shall] must include:

(1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

(h) *Council review.* The Council must hold a public hearing to allow the parties and the public to testify on the agreement. On or before May 1, the County Council [shall] must indicate by resolution its [intention] intent to appropriate funds for or otherwise implement the agreement or its [intention] intent not to do so, and [shall] must state its reasons for any intent to reject any part of the agreement. The Council, by majority vote taken on or before May 1, may defer the May 1 deadline to any date not later than May 15. If the Council indicates its [intention] intent to reject any part, it [shall] must designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative [shall] must also participate fully in stating the Council's position in any ensuing impasse procedure. The parties [shall] must thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either [of the parties] party may initiate the impasse procedure [set forth] described in Section 33-81. The results

of the negotiation or impasse procedure [shall] must be submitted to the Council on or before May 10. If the Council has deferred the May 1 deadline, that action automatically postpones the May 10 deadline by the same number of days.

* * *

33-81. Impasse procedure.

(a) Before September 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an impasse neutral either by agreement or through the processes of the American Arbitration Association. The impasse neutral [shall be required to] must be available during the period from January [20] 6 to [February 1] January 18. Fees, costs and expenses of the impasse neutral [shall] must be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral. If the parties have not reached agreement by January [20] 6, an impasse exists.

* * *

(5) On or before [February 1] January 18, the impasse neutral must select, as a whole, the more reasonable, in the impasse neutral's judgment, of the final offers submitted by the parties.

* * *

33-108. Bargaining, impasse, and legislative procedures.

(a) Collective bargaining must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and must be finished on or before [February 1] January 15. The employer must publish the

certified representative's initial proposal on economic terms and the employer's initial counter-proposal on economic terms on an internet site accessible to the public within 10 days after the employer's initial counter-proposal is made.

* * *

(e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/arbitrator, or the parties may jointly request those services before an impasse is declared. If the parties do not reach an agreement by [February 1] January 15, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.

* * *

(3) If the mediator/arbitrator finds, in the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, or as of [February 1] January 15 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

(f) (1) If binding arbitration is invoked, the mediator/arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/arbitrator directs. If only complete package proposals are required, the mediator/arbitrator must require the parties to submit jointly a memorandum of all items previously agreed on.

* * *

(3) On or before February [15] 1, the mediator/arbitrator must select, as a whole, the more reasonable of the final offers submitted by the parties. The mediator/arbitrator must not compromise or alter a final offer. The mediator/arbitrator must not consider or receive any argument or evidence related to the history of collective bargaining in the immediate dispute, including any previous settlement offer not contained in the final offers. However, the mediator/arbitrator must consider all previously agreed-on items, integrated with the disputed items, to decide which offer is the most reasonable.

* * *

(g) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The employer must submit to the Council by [April 1] March 15, unless extenuating circumstances require a later date, any term or condition of the collective bargaining agreement that requires an appropriation of funds, or the enactment or adoption of any County law or regulation, or which has or may have a present or future fiscal impact. If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by [April 1] March 15. The employer must expressly identify to the Council and the certified representative any term or condition that requires Council review. Each submission to the Council must include:

(1) all proposed legislation and regulations necessary to implement the collective bargaining agreement;

(2) all changes from the previous collective bargaining agreement, indicated by brackets and underlines or a similar notation system; and

(3) all side letters or other extraneous documents that are binding on the parties.

The employer must make a good faith effort to have the Council approve all terms of the final agreement that require Council review.

(h) The Council [may] must hold a public hearing to enable the parties and the public to testify on the agreement.

* * *

33-153. Bargaining, impasse, and legislative procedures.

(a) Collective bargaining must begin no later than the November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and must be completed on or before January [15] 2. The resolution of a bargaining impasse must be completed by [February 1] January 17. These time limits may be waived or extended by written agreement of the parties. The employer must publish the certified representative's initial proposal on economic terms and the employer's initial counter-proposal on economic terms on an internet site accessible to the public within 10 days after the employer's initial counter-proposal is made.

* * *

(d) Before September 10 of any year in which the employer and the certified representative bargain collectively, they must choose an

impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January [15] 2 to [February 1] January 17. The impasse neutral's fees and expenses must be shared equally by the employer and the certified representative.

(e) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral, or the parties may jointly request those services before declaring an impasse. If the parties have not agreed on a collective bargaining agreement by January [15] 2, an impasse exists by operation of law.

* * *

(i) On or before [February 1] January 17, unless that date is extended by written agreement of the parties, the impasse neutral must select the final offer that, as a whole, the impasse neutral judges to be the more reasonable.

* * *

(l) In each proposed annual operating budget, the County Executive must describe any collective bargaining agreement or amendment to an agreement that is scheduled to take effect in the next fiscal year and estimate the cost of implementing that agreement. The annual operating budget must include sufficient funds to pay for the items in the parties' final agreement. The employer must expressly identify to the Council by [April 1] March 15, unless extenuating circumstances require a later date, all terms and conditions in the agreement that:

(1) require an appropriation of funds, [or]

(2) are inconsistent with any County law or regulation, [or]

(3) require the enactment or adoption of any County law or regulation, or

(4) which have or may have a present or future fiscal impact.

If a later submission is necessary, the employer must specify the submission date and the reasons for delay to the Council President by [April 1] March 15. The employer must make a good faith effort to have the Council take action to implement all terms and conditions in the parties' final agreement.

* * *

(n) The Council [may] must hold a public hearing to enable the parties and the public to testify on the agreement.

* * *

Approved:

Valerie Ervin, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 19-11
Personnel – Collective Bargaining – Public Access

DESCRIPTION: Bill 19-11 would require the Council to hold a public hearing on each collective bargaining agreement submitted to it, change certain dates in the collective bargaining process, and require public disclosure of each party's initial bargaining position on major economic provisions.

PROBLEM: The Organizational Reform Commission recommended these changes to the collective bargaining laws.

GOALS AND OBJECTIVES: To increase public access to the collective bargaining process with County employees.

COORDINATION: County Executive, County Attorney, Human Resources

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Organizational Reform Commission Report.
Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: None.

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

July 8, 2011

TO: Valerie Ervin, President, County Council

FROM: Joseph F. Beach, Director

SUBJECT: Council Bill 19-11, Personnel – Collective Bargaining – Public Access

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

Council Bill 19-11 would require the County Council to hold a public hearing on each collective bargaining agreement submitted to it, accelerate the statutorily required dates for declaring impasse and completing arbitration by two weeks, and require public disclosure of each party's initial bargaining position on economic provisions. The last change is accomplished by requiring the employer to post the union's initial proposal on economic terms and the employer's initial counter-proposal on economic terms on an internet site accessible to the public within 10 days after the employer's counter-proposal is made.

FISCAL SUMMARY

The fiscal impact of the proposed legislation is indeterminate. Factors that could have an effect include:

- any additional work involved in organizing and placing proposals for publication on a public internet site but the volume of that work is not expected to be significant;
- any additional time spent responding to public inquiries about the collective bargaining process or the content of proposals and counter-proposals; and
- the compressed schedule, which may lead to inefficiencies in the process. Both the management and the union teams will have less time to prepare. This increases the likelihood that there would be more unresolved issues leading to impasse, which could increase the number of days spent in mediation and arbitration. The cost for an additional day for a mediator or an arbitrator ranges from $1,500 to $3,000[1].

[1] See the fiscal impact statement for Council Bill 20-11, Personnel – Collective Bargaining – Public Accountability – Impasse Arbitration.

ECONOMIC SUMMARY

The Department of Finance does not believe that the subject legislation has a quantifiable economic impact on Montgomery County because the size of the workforce it affects is small in relation to the total County resident workforce and the impact of the legislation on the outcome of mediation and arbitration can not be reliably determined or quantified.

The following contributed to and concurred with this analysis: Stuart Weisberg, Office of Human Resources, Jeremy Milewski, Office of Human Resources, Michael Coveyou, Department of Finance, and Lori O'Brien, Office of Management and Budget.

JFB:lob

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joseph Adler, Director, Office of Human Resources
Karen Hawkins, Acting Director, Department of Finance
Michael Coveyou, Department of Finance
Jeremy Milewski, Office of Human Resources
Stuart Weisberg, Office of Human Resources
Lori O'Brien, Office of Management and Budget
John Cuff, Office of Management and Budget
Amy Wilson, Office of Management and Budget

UFCW LOCAL 1994
Municipal & County Government Employees Organization

GINO RENNE PRESIDENT
YVETTE CUFFIE SECRETARY-TREASURER
NELVIN RANSOME RECORDER
WWW.MCGEO.ORG

UNITED FOOD & COMMERCIAL WORKERS LOCAL 1994 · 600 SOUTH FREDERICK AVENUE ■ SUITE 200 ■ GAITHERSBURG, MD 20877 ■ 301-977-2447 ■ 800-948-0654 ■ FAX 301-977-6752

Testimony of Gino Renne
Bill Nos. 18-11, 19-11, 20-11

I am here today in opposition to the unrelenting attack on the rights of working people—employees of this County—to bargain collectively. Each of these bills would weaken that right and turn the collective bargaining process into a 3 ring circus.

The purpose of these bills is to maintain an empty façade for a process that has been hollowed out from within. These proposals are nothing more than political theater, hypocritical and cynical attempts to dodge responsibility for governing and to play to the media's anti-union bigotry. It is galling, too, that when you follow the logic string to the source of these ideas, you find that they germinated in places with no economic or cultural link to our County—one small Maryland County or in small, rural states where right-to-work attitudes are nurtured by right-wing politicians.

Think about what you are doing here:

• Proposing "public" bargaining is just another ploy for shedding your responsibility to County residents. Our recent experience informs us that the public was thoroughly involved in the last round of bargaining. Certainly, one of the major impediments to an equitable agreement was the incessant effort on the part of the County Executive to run to the press with details of negotiations at every possible opportunity. Moreover, real bargaining requires parties to engage in serious and frank discussion, and to put forth proposals that may not always completely satisfy their respective constituents. When bargaining is

made open to public scrutiny, there is no incentive for parties to engage in such real bargaining. Instead, parties are rewarded for public posturing and coming up with sound bites to defend their respective positions. This degrades the real collective bargaining process, which is already subject to public scrutiny at the point at which parties reach agreement and that agreement is rigorously examined and voted upon by this Council. That process, as currently constituted, makes this sort of law unnecessary and reveals it as the cynical political ploy that it is.

• Plans to reformulate the arbitration system is at best superficial and inconsequential, at worst a more expensive provision, that would not improve the bargaining process.

• Eliminating "effects" bargaining for County police officers would enable the Police Department to evade responsibility for incompetent management and add a layer of fog to management decisions.

It is a waste of the County's resources and an affront to taxpayers and County workers to once again devote more time and money to nibble around the edges trying to devise new ways to hobble the collective bargaining law.

Last year, we criticized proposals to weaken the law's arbitration provisions as nothing more than an effort by the Council and the Executive to dodge responsibility for management failures and the outcome in bargaining. That legislation was nevertheless enacted, yet we saw the union positions prevail in each case within that weakened arbitration process.

This council has zero credibility with our union right now. Madam president, you sat across the table from us at the Woodside Deli this Spring and personally assured us that the council had no intention of taking action on the ORC recommendations concerning collective

bargaining- claiming that these recommendations were not only outside of the Commission's purview, but were inappropriate and ridiculous. Yet here we are today. Ms. Ervin, legislation motivated by retribution and fragile egos, does not make good policy.

Collective bargaining for Montgomery County workers has been evolving since the early 1970s when the County adopted a thoroughly ineffective "meet and confer" process. The system that we have today was put into effect in 1986 with legislation that ended meet and confer and adopted full-scale negotiations on economics and working conditions. It was the product of very hard work by a highly motivated group of political, community, labor, and business leaders. I was proud to be among them.

The County Council was "authorized" to develop collective bargaining in 1984 under the terms of a ballot proposition adopted by County voters. The conditions for all three units were deplorable because there was no legal compulsion on the part of the County to deal honorably with its workforce. Our memory of the pre-bargaining era drives us to fight hard against any proposals that would redirect us toward those bad old days.

The Council's current forays into "amending" collective bargaining are largely prompted by a misreading of the political winds—a belief that they can distract attention from management failures and a lack of political leadership by flogging the County's workforce and blaming us for the County's fiscal woes.

We also see a "herd mentality" within the Council, responding like deer in the headlights to the editorial opinions of the Washington Post where anti union sentiment is rife. We would caution Council members that the Washington Post's editorial page never appears on a ballot.

Voters cast their votes with the expectation that individuals who are elected to the Council will demonstrate leadership.

Economics, of course, is the core of our disagreement with the Council and the Executive. Our mission is to advocate for our members within the legally established framework of collective bargaining. Management's job is to craft the choices and marshal the resources of the County to, first and foremost, govern prudently by providing residents with taxpayer services: public safety, education, recreation, health and a social safety net. Our members are the keystone of the County's resources.

We remind you that the current collective bargaining system has yielded voluntary acceptance of wage freezes and major sacrifices by the workforce that saved taxpayers tens of millions of dollars over the past three years in return for the County's assurances of employment security and with the full expectation that we will recover these losses over time as the economy is restored.

As difficult as the past three years have been for all working families, and especially our members, one can only imagine what would have been the fate of Ride On bus operators, nurses and health professionals, drivers and laborers in DPW, corrections officers, deputy sheriffs, librarians and other general government workers in this era of retrenchment if they had to endure this recession without union representation. One can only imagine the deterioration in services that County residents would have had to endure if the County's elected officials had been left to their own devices to deal with the effects of this national recession.

We do not speak for the County's police officers or firefighters, but we are closely aligned with them in the defense of collective bargaining.

We note that the County Council has proposed legislation that would alter the effects bargaining procedures for the County police force. I would like to convey MCGEO's strong opposition to this legislation for the same reason that we oppose the other bills: this is a cynical attempt to place blame on County workers (in this case the police officers who protect our County), who did not create this mess and should not be used as political pawns for Council members who seek to advance their own agendas. This police legislation is particularly shameful, since it alters workers right to bargain at a time when workers need strong representation the most—when jobs are lost due to economic conditions outside the workers' control.

I submit that there is no need for these changes and there is still time and opportunity for the Council to redirect your efforts toward building a sustainable model of County government where all the stakeholders who work and live here—residents, business interests and the workforce—can collaborate and thrive in an environment that puts people above politics.
Thank you.

LOCAL 1664

Montgomery County Career Fire Fighters Ass'n., Inc.

Testimony by John J. Sparks JS
President, IAFF Local 1664
Public Hearing - Bills 18-11, 19-11 & 20-11
July 12, 2011

I am John Sparks, President of the Montgomery County Career Fire Fighters Association, IAFF Local 1664. I am here today to speak in opposition to the three bills that, if adopted, would adversely impact collective bargaining for County employees, while at the same time produce little or no savings for County Government. While the three bills address different aspects of the collective bargaining process, and Bill 18-11 does not directly impact collective bargaining for fire fighters and paramedics, all three bills suffer from a common set of deficiencies.

First, we believe that the Organizational Reform Commission, whose recommendations form the basis of these bills, overstepped its bounds. The original charge given to the ORC did not include consideration of changes to the County's collective bargaining laws; and for good reason. It is our understanding that most members of the ORC had little or no experience in matters pertaining to labor relations and collective bargaining, and the results of their work that are incorporated in these bills demonstrate this lack of experience. Most of the recommended changes to the collective bargaining process contained in these bills are not well thought out and contain serious flaws.

For instance, Bill 19-11, if adopted, would move the date for completing the term bargaining and impasse resolution procedures up two weeks. Yet at the same time, it doesn't move up the start of term bargaining by a similar period of time. More importantly, experience has shown that the County is unable to provide complete and meaningful responses to the Unions' request for financial data until mid-December and perhaps even into January in any given fiscal year. Thus, substantive bargaining over economic proposals cannot occur until that point in time, which would be close to or beyond the early January date that the bill would establish as the point in time that statutory impasse occurs.

Second, Bill 19-11 would require that the Unions' initial proposals on economic items and the County Executive's counter-proposals on those items be made available for public review. This proposed amendment would add no value at all to the collective bargaining process, and in fact, could actually harm the process. We agree with the observation of ORC Commissioner Susan Heltemes that the integrity of the collective bargaining process relies on all persons involved in the negotiations to maintain confidentiality until a final agreement is reached; and that if initial proposals were made public, outside pressures would more often than not lead to breakdowns and stalemates in the bargaining process.

Further, to think that requiring proposals to be made public will influence the parties to moderate their initial offers is simply naïve thinking. In addition, anyone who has participated in

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collective bargaining knows full well that the final outcome in collective bargaining usually bears little resemblance to the initial proposals. This proposed law change would neither generate any savings for the County, nor would it create any improvements to the collective bargaining process.

We do, however, agree with the proposed amendment in Bill 19-11 that would require the County Executive to submit to the Council by March 15 any term of a labor contract which requires an appropriation of funds or change to County law. Such notification should occur at the same time the County Executive submits his proposed operating budget, not two weeks later.

Turning to Bill 20-11, we note, with objection, that the impasse resolution procedure would be changed to prohibit the same individual from serving as both the mediator and impasse arbitrator, as is the case now. In making this recommendation, the ORC commented in its report that the free flow of ideas during mediation is diminished when the mediator also serves as the arbitrator. Speaking from years of experience, I can tell you that just the opposite is true. Having the same individual appointed as both mediator and arbitrator facilitates rather than inhibits the discussion that occurs during mediation, and creates a greater chance of reaching a full or partial agreement prior to arbitration.

Also, there is no doubt that requiring different individuals to serve as mediator and neutral arbitrator would significantly increase the time needed to complete the impasse resolution process. Under the current system, the impasse neutral gains valuable insight as to the purpose, intent and practical application of the parties' contract proposals during mediation. Significant time is saved in a subsequent arbitration proceeding by the impasse neutral having previously gained this understanding. Time that is already at a premium would have to be spent educating a different person serving as the arbitrator as to the context and parameters of the parties' proposals.

Further, the provision of Bill 20-11 that would create a tripartite arbitration board, with the Union and the Employer each appointing a partisan representative, can be summed up best as being nonsensical. In every case, without exception, each partisan member of the arbitration board will vote to select the Last Best Final Offer of the party that appointed him or her. Any information that the neutral arbitrator needs about the Last Best Final Offers is provided during the arbitration hearing. We view this tripartite board proposal as being mere "window dressing" rather than serving any useful purpose.

In addition, the five-member impasse panel that Bill 20-11 would create for the purpose of selecting a neutral arbitrator in the absence of a joint selection by the parties is actually counterproductive. The language of the bill restricts panel eligibility to individuals who are County residents. All affected parties, including County taxpayers, are best served by having arbitrators who have considerable experience in interest arbitration deciding cases of such critical importance. There is simply not a large (i.e., adequate) pool of candidates with the desired qualifications living in Montgomery County. Moreover, it is wrong to think that arbitrators who live in the County are, for that reason, best qualified to understand and resolve issues involving the allocation of County funds.

Finally, Bill 20-11 would amend the County collective bargaining laws by changing the criteria that guide an arbitrator in selecting one of the two competing Last Best Final Offers. More specifically, the bill would add criteria that the Council considered and rejected just six or seven months ago. The criteria that were not adopted were rejected for good reason. They would unfairly tip the impasse resolution scale far in the direction of the County Executive.

Nothing has occurred in the last few months from which to conclude that those rejected criteria should now be adopted. While interest arbitrators selected the Last Best Final Offer of the employee representative in all three cases occurring this past winter, it was not because the existing criteria are deficient or slanted in a way to produce results that are favorable to the employees; it was because, *as the Council quickly recognized*, the Last Best Final Offer that the County Executive submitted in each case contained *extreme* proposals that went far beyond what was necessary to address the County's fiscal problems. The existing criteria in the collective bargaining laws have been written to achieve the desired end result: the selection of the Last Best Final Offer that contains the most fair and balanced resolution to a collective bargaining impasse. Moreover, the Council still serves as the final arbiter on whether the economic provisions of a collective bargaining agreement are put into effect.

We urge the Council to reject the objectionable elements of the bills that have been highlighted herein.

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Montgomery County Lodge 35, Inc.

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**Statement of Fraternal Order of Police,
Montgomery County Lodge 35**

Tuesday, July 12, 2011

We are here again because the County clearly wants the priority of County police officers to be fighting for their rights rather than providing services to the public. For shame, because despite years of VOLUNTARY concessions by police officers made during the County's tight fiscal situation, and as the County budget increases, we have to be here to spend our time defending a process that has worked for nearly three decades. It worked up until the day politicians found process under law inconvenient to their purpose.

The County Council has several bills before it. These bills arise from a very questionable set of recommendations in the January 2011 report of the Organizational Review Commission. The most questionable is based on a recommendation on so called "effects bargaining."

The capital budget is in the billions of dollars, yet the commission had some special interest in the collective bargaining process which has worked well for over 28 years. The commission showed no interest in either the very high salaries of non-represented, non-union employees or the means which their salaries and benefits are established. Clearly the commission was carrying water for political interests. This recommendation is outside the scope of the commission's charge and should be dismissed.

Employee contract negotiations are no different than any other negotiations the County engages in for services. The County employs both represented and non-represented employees. It seems odd that the Commission focused on employee contracts for a minority of county-compensated employees. There are 15,000 county employees and 22,000 MCPS employees. There are but 1200 police officers.

The minutes of the commission do not show any detailed discussion of what is called "effects bargaining". Apparently, they did some of their work in secret while maintaining a misperception of openness and transparency. Their work seems more political, and devised in secret without scrutiny or accountability. In its final report, the commission makes conclusions based on either secret conversations that are not documented or were documented and are now withheld from public view. We have filed a complaint with the police department to have them investigate. This is a matter of management's integrity and accountability. [Attached]

Their conclusions are based upon a false premise. Either the commission made up what it asserts to be facts, or someone gave false and misleading information. [See PIA records

request and response, attached] In any event, we met with the commission and were never afforded any opportunity to respond to any allegations or assertions concerning "effects" that were ultimately presented in the final report.

Since there are only two parties to "effects bargaining", it is patently unfair that the commission heard from only one party and never afforded FOP Lodge 35 any opportunity to respond. The commission called its credibility into question through this one-sided approach. Also, clearly, as noted by one commission member, effects bargaining was not within the charge of the commission. For whatever reason, the co-chairs of the commission and a majority of that commission allowed it to be used for political purposes with little or no consideration to fairness, balance, perspective or veracity. We have responded to portions of the commission's report. [Attached]

"Effects bargaining" comes out of a case that was decided by the United States Supreme Court. It is a complex topic, rarely understood by its critics. **Effects bargaining has never had any adverse impact upon our ability to respond to calls for service or to protect the public.** Indeed, we estimate that about 95% of the police department's business is not subject to bargaining and we have no interest in requiring such bargaining. Penultimately, under our law, issues subject to "effects bargaining" are subject to an expedited resolution process. In 2004 we agreed to a law change that sets a very short period to go to impasse and resolve effects matters. Management has rarely, if ever used that process and has no right to complain.

Some, notably Councilmember Phil Andrews, have consistently distorted the facts and been less than candid about effects bargaining. Mr. Andrews uses the in-car video program as an example that he claims makes his point. Assuming, *arguendo*, that in-car video involves effects bargaining, the fact is that the county proposed a **pilot** program. The County began bargaining cameras, and bought them. They were installed in vehicles and operating. Several legal issues arose during discussions as several cameras were field tested. Our chief concern was the wiretap laws and public and officer privacy rights.

The County, not FOP Lodge 35, sought to discontinue discussions. Then Chief Charles Moose contacted us and asked to call off negotiations because the County wanted to return the cameras and use the money for something else. In any bargaining, once a party abandons or withdraws its proposal, the proposal is off the table. Thereafter, we went through several rounds of term negotiations and the County never raised the subject, nor did they pursue it in any other manner until very late in term bargaining in December 2007. The issue was resolved and an agreement signed in 2008. We have testified under oath to the history of this subject. Mr. Andrews' uninformed statements have not been under oath.

We have little interest in most operational policies, such as processing prisoners, opening facilities, determining functions like school resource officers, determining enforcement priorities and the like. To our knowledge we have only been to impasse on one issue, and that was successfully mediated prior to a hearing. Other issues that have successfully bargained and agreements reached include technology changes affecting the way work is done, increasing the

number of supervisors on the midnight shift, and reducing the number of master police officers. There are others.

It is far more likely that inept management and ineffectual leadership hinder police operations. We meet with police management quarterly in a labor relations meeting, we resolve issues in the workplace daily and we have solicited regularly for any outstanding items the County wishes to discuss. [Attached] In fact, most issues arising from operational changes are resolved without controversy. But the issue must be brought to our attention. If there is a problem with police officers checking email, we were not made aware of it until today's newspaper was delivered to our office.

Again, contract negotiation with employees is no different than contract negotiation with any other service provider. Public access to proposals during bargaining harms the ability to openly discuss all options. The County does not make public negotiations with Live Nation, Costco, Westfield or other corporations with which it deals. Additionally, the premise that the public has no input in the collective bargaining process is false. The public is at the table. We serve and live in the County.

The commission fails to show that the fair and level playing field established under the Police Labor Relations Article for impasse arbitration is in any way deficient. In recommending a change to the impasse procedure the commission fails to cite one arbitration decision that was unsound. The only fact cited is the number of arbitrations and who prevailed. This is analogous to determining that the rules of baseball must be changed based on the number of time the New York Yankees make it to the World Series. No one has identified any deficiency in the impasse arbitration process other than the FOP has been found to be more reasonable than the County more often than not. We are not surprised by that statistic.

The police officers in Montgomery County want to return to work. Instead, we are called here to address baseless attacks on our rights under law a process that has kept police officers doing what they should be doing: protecting and addressing the public safety concerns of the community.

Peace Action Montgomery

Montgomery Co, MD *Power for Peace*

Testimony in Opposition to Bill 19-11
Personnel-Collective Bargaining -Public Access
July 12, 2011

My name is Jean Athey and I am coordinator of Peace Action Montgomery. On behalf of our organization and in support of Montgomery County workers, I offer these observations regarding Bill 19-11 dealing with collective bargaining for County workers.

Given the sharp decline in union membership in the private sector, it is understandable that the public is generally unaware of how collective bargaining works and what it is intended to accomplish. It is not merely —as some would suggest—an arrangement that caters to unions and workers. Rather, as you know, collective bargaining provides a mechanism that enhances the roles of both management and workers. That is, it is a means to accommodate the needs of each side as expressed by their representatives.

We fear that piecemeal changes to address aspects of public policy, such as this, without a broader effort to put the policy in context generally result in unintended and often negative consequences.

That is how we view this current proposal for so-called "open" bargaining sessions. First of all, if the Executive and his designated negotiators are not representing the public, who are they representing when they negotiate with employee organizations?

As taxpayers, we expect our elected representatives to do exactly that: represent us.

Opening these sessions in the way that is proposed will hamper open and frank discussion and encourage both sides to play to real or perceived audiences. Bargaining of any type is most effective when the parties feel free to exchange views candidly.

And please note: Open negotiations would, by definition, be open to union members as well as those who are opposed to bargaining. That could be a combustible mix that could produce lots of heat, but not very much light and precious little progress toward an equitable and productive workplace.

P.O. Box 1653, Olney, MD 20830 Phone: 301-570-0923 www.PeaceActionMC.org
An Organization of 2,600 Dues-Paying Members in Montgomery County

We agree with the comments of Organizational Reform Commissioner Susan Heltemes who said:

"Initial disclosures of proposals would likely establish unrealistic expectations not only for management, but also for employees since initial proposals are usually not where the negotiations come down at the conclusion of bargaining. If opening proffers were open to the public, it is likely that outside input could obstruct the bargaining process and interfere with tight timelines and strategy. Such obstruction could alter the negotiating process and ultimately end in more arbitration and deterioration of what has become a respected form of negotiation for our public sector employees."

We strongly recommend that the Council and the Executive restrain the urge to enact these or any other changes to the labor laws unless and until the public interest is clearly identified, which we don't think it has been in this case.

And finally, as concerned citizens, we would like to express our disappointment with the recent actions in the County relating to union negotiations. For example, as you surely know, the arbitrator for the MCGEO impasse stated that the union's proposal met the county's goals for saving money but in a way that was fairer to employees. But this arbitration was totally ignored. This appeared to us to be bad-faith negotiating on the part of the County, at best.

So now there is a new version of labor relations law before the Council. We wonder why the County didn't follow its own rules previously in its negotiations with its workforce and we ask why the workers should expect the County to follow new rules when it has shown such disrespect for the current ones.

Thank you.

TESTIMONY OF JOSLYN N. WILLIAMS
PRESIDENT METROPOLITAN WASHINGTON COUNCIL, AFL-CIO
ON BILLS 19-11 AND 20 -11
July 12, 2011

Good afternoon. My name is Joslyn Williams and I'm President of the Metropolitan Washington Council, AFL-CIO, the umbrella organization for nearly 200 area unions representing over 150,000 area union members and their families.

Brother Renne has done his usual superb job of laying out a convincing case against the bills before you, so I won't belabor the points he's already touched on. What I'd like to do instead is to say just how disappointing and deeply frustrating it's been this year to find these sorts of attacks on public workers occurring here in Montgomery County.

The local labor movement has rallied and marched in the streets of the nation's capitol this year against the ongoing attacks on Wisconsin's public workers – indeed at one point we took over a building where lobbyists were holding a fundraiser for Wisconsin republican leaders. In the district, we played a vital role in firing DC Mayor Adrian Fenty, who had scapegoated public workers as well, most notably hardworking teachers in the city's schools.

As we watched such attacks spread to other states like Ohio and New Jersey, we congratulated ourselves that in Montgomery County we were fortunate to enjoy a collaborative relationship with county political leaders who not only appreciated workers and the union movement, but celebrated and were proud of that relationship.

That relationship extends beyond legislation, politics and negotiations: we're proud that the DC Labor FilmFest, one of the biggest and most successful such film festivals in the country, is held every year at the American Film Institute, where, i might add, the workers are all union members as well.

So I don't mind telling you that it's been terribly disappointing to find myself at demonstrations in recent months against some of our friends sitting here on the dais before me. Political leaders we've been proud to work with and call friends. Visionaries who understood that we all sink or swim together in this community.

Yet somehow, whatever it is that's infected the body politic in Wisconsin, in Ohio and in New Jersey seems to have seeped into Montgomery County as well. Maybe it's a virus in the water.

Let me suggest to you that the people who work for you – county employees and indeed all public workers – are not the enemy. They're taxpayers and consumers and they're voters, too. We need to work together to solve the common economic problems we face. If we do not, the county will suffer, as will the workers and ultimately, you too will have to face the political consequences.

July 12, 2011

Germantown, MD 20874

Tel. 301-529-0318

My name is Don Roose. My family and I have lived in Montgomery County for more than 30 years. Working in Montgomery County/Child Protective Services, my professional background spans the last 50 years including international social welfare and as director of a national professional association. My wife and I have both personal and investment property in this County. We are very much part of the local community.

After bloody struggles, the rights of the American worker to bargain for wages for work performed, for benefits for that work performed and for their working conditions ----- that struggle and right were earned by the American worker in the 1930s, and, as it happens, the decade I was born. The name of this key American value is called *"collective bargaining"* and this right has been with us for 80 years.

But let us be clear: if the worker does not have the right to strike when negotiations collapse or, in the case of government employees, to appeal their failed negotiations to a neutral arbitrator, and if a written contract mutually agreeing to Binding Arbitration can be cast aside, then what is left is a *"company union"* where the worker is left to come to the so-called negotiation table to *"meet and beg." Not so incidentally, it is worth noting that well before any arbitrator renders his/her decision, this person and the process had been mutually agreed upon by both county and union.*

All which means you either honor the final binding decision of the arbitrator; or, you give the county employee the right to strike or, you do neither and in that case, at least have the decency to state to the public that you too, are actively participating in the current parlor game in this nation: namely, to destroy meaningful collective bargaining and turn employees to the mercy of the all-knowing boss who always knows what is best for his workers.

Please, do not participate in a rogue arrangement which will fester employee discord and truly be a shell of what is called employee *"harmony and morale."* Do not participate in gutting historical labor rights by making millions of city, county, state and federal government employees second-class taxpayers and demeaning the value of being a government worker in our country. Hundreds of thousands of public workers have or are in the throes of losing their jobs and have no union recourse, adding yet another layer of joblessness in America. What a way to run a railroad!

Montgomery County is better than that. Thank you.